

APPEAL NO. 041284  
FILED JULY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 3, 2004. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that she had disability from August 19, 2002, through the date of the hearing; and that the appellant (carrier) waived the right to dispute compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022. The carrier appeals these determinations and asserts that the hearing officer erred in resolving an extent-of-injury issue, which was not presented for resolution. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's compensability and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the waiver issue, the carrier asserts that although it did not act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury as required by Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), it did comply with the provisions of amended Section 409.021, effective for claims that occurred on or after September 1, 2003, and therefore did not waive the right to dispute compensability of the claimed injury. We have previously considered and rejected the carrier's argument in Texas Workers' Compensation Commission Appeal No. 031781, decided August 26, 2003. Since the carrier did not agree to initiate benefits or dispute compensability within seven days after it received written notice of injury, the hearing officer did not err in determining that the carrier waived the right to contest compensability of the claimed injury. See Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. As we have affirmed the determination that, irrespective of the waiver issue, the claimant sustained a compensable injury on July 30, 2003, the carrier's reliance on Continental Casualty

Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.) to defeat the waiver determination is misplaced.

Finally, the carrier argues that the hearing officer erred in making the following finding of fact:

2. On \_\_\_\_\_, the Claimant did sustain damage or harm to the physical structure of her body, to wit: lumbar spine and left hip.

The carrier contends that the hearing officer erred in making the above-referenced finding of fact, as it essentially resolves an extent-of-injury dispute, which was not presented for resolution. We do not agree. It appears that in making this finding, the hearing officer was explaining his reasoning for the disability determination. The hearing officer's conclusion of law is simply that the claimant sustained a compensable injury on the date in question and does not limit the compensable injury to any particular body parts or conditions. Under these facts, we perceive no error in the complained-of finding of fact. However, we would point out that this finding of fact should not be interpreted as defining the nature of the injury for all time or as precluding a future extent-of-injury dispute.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Chris Cowan<sup>1</sup>  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge

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<sup>1</sup>(CDC) and the author judge, are not related to one another.